

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

DONOVAN D. BARROW,	:	Case No. 1:19-cv-1089
Plaintiff,	:	
	:	Judge Timothy S. Black
vs.	:	
	:	Magistrate Judge Stephanie Bowman
WESTROCK, INC.,	:	
Defendant.	:	

**DECISION AND ENTRY
ADOPTING THE REPORT AND RECOMMENDATION (Doc. 35); AND
ORDERING PLAINTIFF TO FILE AMENDED COMPLAINT**

This case is before the Court pursuant to the Order of General Reference to United States Magistrate Judge Stephanie K. Bowman. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and, on January 13, 2021, submitted a combined Order and Report and Recommendation. (Doc. 35). No objections were filed to the Report and Recommendation. However, the Court must address, in this Order, the current status of the case and subsequent filings as well.

Specifically, on January 27, 2020, Plaintiff filed his initial complaint in this case, *pro se*. (Doc. 3). Thereafter, the Court granted Plaintiff's numerous requests to continue and stay this case, in order for Plaintiff to retain counsel. Regardless, to date, Plaintiff has yet to retain counsel and remains *pro se*.

On April 7, 2020, Defendant filed a motion to dismiss, pursuant to Fed. R. Civ. P. 12(b)(6) (Doc. 9), which motion was fully briefed (Docs. 17, 20, 22).¹ However,

¹ Doc. 22 is Plaintiff's unauthorized sur-reply. The Magistrate Judge has since denied Defendant's motion to strike this unauthorized filing. (Doc. 35).

consideration of Defendant's Rule 12(b)(6) motion was deferred through December 1, 2020, as the proceedings were twice stayed at Plaintiff's requests. (*See* Doc. 30 at 2).

On November 30, 2020, immediately prior to the expiration of the stay, Plaintiff filed a motion to amend his complaint (Doc. 32), which motion was opposed and fully briefed (Docs. 33, 34). Notably, Plaintiff did not attach a copy of the proposed amended complaint to his motion, but instead included his proposed amendments within the body of his motion to amend. (Doc. 32).

On January 13, 2021, the Magistrate Judge submitted a combined Order and Report and Recommendation. (Doc. 35). Specifically, the Magistrate Judge noted that Plaintiff had sufficiently alleged facts (albeit for the first time in Plaintiff's technically unauthorized sur-reply to Defendant's motion to dismiss) to state a facially plausible Title VII and ADA claim. (*Id.*) Accordingly, the Magistrate Judge granted Plaintiff's motion for leave to amend (Doc. 32) and **ordered** that "Plaintiff shall file[] his amended complaint containing the supporting factual allegations contained in his sur-reply relating to his Title VII and ADA claims within **30 days** of this Order." (Doc. 35 at 4). The Magistrate Judge further recommended that this Court deny Defendant's motion to dismiss (Doc. 9) without prejudice, given the anticipated filing of the amended complaint. (*Id.*) Defendant did not object to this recommendation.

Despite the Magistrate Judge's clear instructions, Plaintiff failed to file the amended complaint within 30 days and, indeed, has failed to do so to date. As a result, Defendant has filed a motion to dismiss for want of prosecution, arguing, in effect, that Plaintiff has continuously delayed these proceedings and that he has yet to file his

amended complaint, despite being granted leave to do so. (Doc. 36). Plaintiff opposes Defendant's motion, asserting that his amended complaint was previously filed as an attachment to his motion to amend. (Doc. 37). However, as this Court previously noted, Plaintiff did not attach an amended complaint to his motion, but instead incorporated proposed amendments into his memorandum.

Even under the lax standards applicable to *pro se* parties, Plaintiff is not free to disregard the Court's express orders. The Magistrate Judge's January 13, 2021 Order provided Plaintiff with clear instructions and a definite deadline. If Plaintiff fails to comply, this Court will dismiss the case.

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court finds that the Report and Recommendation should be and is hereby adopted.

Specifically, the Court hereby **ORDERS** that:

1. The Report and Recommendation (Doc. 35) is **ADOPTED**; and
2. Defendant's motion to dismiss the complaint (Doc. 9) is **DENIED without prejudice**.

Additionally, the Court hereby **ORDERS** that Plaintiff **SHALL** abide by the Magistrate Judge's instructions, as set forth in the January 13, 2021 Order (Doc. 35) and, accordingly, Plaintiff **SHALL** file his amended complaint **on or before April 14, 2021**. Should Plaintiff fail to file his amended complaint on or before April 14, 2021, the Court will dismiss Plaintiff's case for want of prosecution.

IT IS SO ORDERED.

Date: 3/31/2021

s/ Timothy S. Black
Timothy S. Black
United States District Judge